

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:
Pascale LACAN et al.

Serial No.: 10/501,600

Filed: December 21, 2004

For: PROCESS FOR TREATING AN
OPHTHALMIC LENS

Patent No.: 7,629,053

Issued: December 8, 2009

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Confirmation No.: 9609

**CERTIFICATE OF ELECTRONIC TRANSMISSION
37 C.F.R. § 1.8**

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January 25, 2010
Date


Michael R. Krawzsenek

APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(d)

Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Sir:

Patentees request reconsideration of Patent Term Adjustment (PTA) under 37 C.F.R. §1.705(d). The Determination of Patent Term Adjustment under 35 U.S.C. § 154(b) included with the Issue Notification dated November 18, 2009 indicates a PTA of 811 days. Patentees believe this to be an error and request the PTA to be changed to 1,141 days.

REMARKS

The determination of 811 days is in error in that pursuant to 35 U.S.C. §154(b) the Office failed to issue a patent within three years of the actual filing date of the above-referenced application in accordance with 37 CFR §1.702(b) and failed to take certain action within the time frame specified in 37 CFR §1.702(a).

Pursuant to 37 CFR §1.703(b), Patentees are entitled to a period of patent term adjustment due to failure of the Office to issue a patent within three years after the date the corresponding application was filed under 35 U.S.C. §111(a), *i.e.*, July 14, 2007 (hereinafter "Three Year Delay"). Since the Office failed to issue the above-identified patent within 3 years after the filing date, Patentees are entitled to a period of patent term adjustment beginning on the day after the date that is 3 years after the filing date of the application, *i.e.*, July 15, 2007, and ending on the date the Office issued the patent, *i.e.*, December 8, 2009. Accordingly, the period of patent term adjustment due to the Three Year Delay by the Office is 878 days. This period of adjustment is in agreement with the period of Office delay used by the Office in calculating the patent term adjustment for the above-identified patent (see "USPTO Delay (PTO) Delay (days)" on the PTA Sheet submitted herewith as Exhibit A).

However, in addition to the patent term adjustment due to Three Year Delay, pursuant to 37 CFR §1.703(a) Patentees respectfully submit that they are also entitled to a period of patent term adjustment under §1.702(a) (hereinafter "Examination Delay"). A period of delay of 330 days due to the failure by the Office to mail an action under 35 U.S.C. §132 not later than 14 months after the filing date (*i.e.*, by February 21, 2006) (hereinafter "14 Month Delay"). As the Office failed to mail an action under 35 U.S.C. §132 until January 17, 2007, Patentees are entitled to a period of patent term adjustment beginning on the day after the date that is 14 months after the date on which the

above-referenced application was filed under 35 U.S.C. §111(a), *i. e.*, February 22, 2006, and ending on the date of mailing of an action under 35 U.S.C. §132, *i.e.*, January 17, 2007. Accordingly, the period of patent term adjustment due to the 14 Month Delay by the Office is 330 days, which is in agreement with the period calculated by the Office (see PTA Sheet submitted herewith as Exhibit A). Accordingly, Patentees are entitled to a total period of Examination delay of 330 days.

As set forth in 37 CFR §1.703(f), Patentees are entitled to a period of patent term adjustment equal to the period of delays based on the grounds set forth in 37 CFR §1.702 (hereinafter "Office Delay") reduced by the period of time equal to the period of time during which Patentees failed to engage in reasonable efforts to conclude prosecution pursuant to 37 CFR §1.704 (hereinafter "Applicant Delay"). With respect to the above-referenced application, the total period of Office Delay is the sum of the period of Three Year Delay (878 days) and the period of Examination Delay (330 days) *to the extent these periods of delay are not overlapping*. As the period of 14 Month Delay ended on January 17, 2007, prior to the first day of the period of Three Year Delay, *i.e.*, July 15, 2007, Patentees submit that these periods are not overlapping. Patentees submit the sum of these periods is 1,208 days, with no periods overlapping.

To calculate the period of patent term adjustment, the total period of Office Delay is reduced by the period of Applicant Delay, which the USPTO correctly calculated as a period of 67 days. Accordingly, Patentees submit that the correct patent term adjustment for the above-referenced application is **1,141 days**, which is the difference between the total period of Office Delay (1,208 days) and the period of Applicant Delay (67 days).

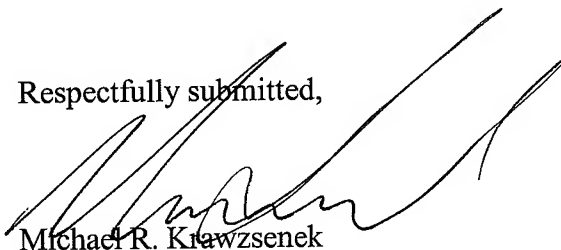
CONCLUSION

In consideration of the events described above, Applicants believe the PTA calculation of 811 days is incorrect. As such, Applicants respectfully request reconsideration of the PTA in the following manner:

- 1) Total PTO delay should be calculated as 1,208 days;
- 2) Total Applicant delay should be calculated as 67 days; and
- 3) Total PTA should be calculated as 1,141 days.

The required fee in the amount of \$200.00 in connection with the filing of this paper is being charged to a credit card through EFS-Web concurrently with this submission. The Commissioner is hereby authorized to deduct any underpayment of fees or any additional fees required under 37 C.F.R. §§ 1.16 to 1.21 in connection with the filing of this paper from Fulbright & Jaworski Deposit Account No.: 50-1212/ESSR:085US.

Respectfully submitted,



Michael R. Krawzsenek
Reg. No. 51,898
Attorney for Applicants

FULBRIGHT & JAWORSKI L.L.P.
600 Congress Avenue, Suite 2400
Austin, Texas 78701
(512) 474-5201

Date: January 25, 2010

Exhibit A

10/501,600 PROCESS FOR TREATING AN OPHTHALMIC LENS

01-22-
2010::15:18:20**Patent Term Adjustments**

Patent Term Adjustment (PTA) for Application Number: 10/501,600

Filing or 371(c) Date:	12-21-2004	USPTO Delay (PTO) Delay (days):	878
Issue Date of Patent:	12-08-2009	Three Years:	-
Pre-Issue Petitions (days):	+0	Applicant Delay (APPL) Delay (days):	67
Post-Issue Petitions (days):	+0	Total PTA (days):	811
USPTO Adjustment(days):	+0	Explanation Of Calculations	

Patent Term Adjustment History

Date	Contents Description	PTO(Days)	APPL(Days)
11-18-2009	PTA 36 Months	548	
12-08-2009	Patent Issue Date Used in PTA Calculation		
10-27-2009	Dispatch to FDC	↑	
10-27-2009	Application Is Considered Ready for Issue	↑	
10-23-2009	Issue Fee Payment Verified	↑	
10-23-2009	Issue Fee Payment Received	↑	
08-06-2009	Mail Notice of Allowance	↑	
08-05-2009	Document Verification	↑	
08-05-2009	Notice of Allowance Data Verification Completed	↑	
03-04-2009	Information Disclosure Statement considered	↑	
05-30-2009	Date Forwarded to Examiner	↑	
04-16-2009	Response after Non-Final Action		42
03-04-2009	Information Disclosure Statement (IDS) Filed		↑
04-07-2009	Mail Notice of Informal or Non-Responsive Amendment		↑
04-06-2009	Date Forwarded to Examiner		↑
03-05-2009	Informal or Non-Responsive Amendment after Examiner Action		↑
03-05-2009	Response after Non-Final Action		↑
03-04-2009	Information Disclosure Statement (IDS) Filed		
01-09-2009	Miscellaneous Incoming Letter		
12-10-2008	Mail Examiner Interview Summary (PTOL - 413)		
12-04-2008	Examiner Interview Summary Record (PTOL - 413)		
12-05-2008	Mail Notice of Withdrawn Action		
12-05-2008	Mail Non-Final Rejection		
12-04-2008	Non-Final Rejection		
12-04-2008	Date Forwarded to Examiner		
12-04-2008	Letter Withdrawing / Vacating Office Action		
10-07-2008	Miscellaneous Incoming Letter		
01-29-2008	Reference capture on IDS		
01-29-2008	Information Disclosure Statement (IDS) Filed		25
06-04-2008	Mail Notice of Restarted Response Period		↑

06-02-2008	Letter Restarting Period for Response (i.e. Letter re: References)	⬆
04-18-2008	Mail Restriction Requirement	⬆
04-14-2008	Requirement for Restriction / Election	⬆
01-29-2008	Information Disclosure Statement considered	⬆
01-04-2008	Information Disclosure Statement considered	⬆
01-29-2008	Information Disclosure Statement (IDS) Filed	⬆
01-04-2008	Reference capture on IDS	⬆
01-04-2008	Information Disclosure Statement (IDS) Filed	⬆
01-20-2008	Date Forwarded to Examiner	⬆
01-04-2008	Response after Non-Final Action	⬆
01-04-2008	Information Disclosure Statement (IDS) Filed	⬆
10-05-2007	Mail Non-Final Rejection	
10-04-2007	Case Docketed to Examiner in GAU	
10-01-2007	Non-Final Rejection	
01-17-2006	Information Disclosure Statement considered	
07-28-2007	Date Forwarded to Examiner	
07-27-2007	Response to Election / Restriction Filed	
07-27-2007	Request for Extension of Time - Granted	
05-29-2007	Mail Restriction Requirement	
05-24-2007	Requirement for Restriction / Election	
03-22-2007	Date Forwarded to Examiner	
03-19-2007	Response to Election / Restriction Filed	
03-19-2007	Request for Extension of Time - Granted	
01-17-2007	Mail Restriction Requirement	330
01-08-2007	Requirement for Restriction / Election	⬆
01-17-2006	Reference capture on IDS	⬆
01-17-2006	Information Disclosure Statement (IDS) Filed	⬆
01-17-2006	Information Disclosure Statement (IDS) Filed	⬆
01-06-2006	Preliminary Amendment	⬆
10-26-2005	IFW TSS Processing by Tech Center Complete	⬆
12-21-2004	Reference capture on IDS	⬆
10-26-2005	Case Docketed to Examiner in GAU	⬆
03-08-2005	Cleared by OIPE CSR	⬆
03-08-2005	Cleared by OIPE CSR	⬆
03-08-2005	Cleared by OIPE CSR	⬆
03-08-2005	Cleared by OIPE CSR	⬆
03-08-2005	Cleared by OIPE CSR	⬆
12-21-2004	371 Completion Date	⬆
02-14-2005	Application Dispatched from OIPE	
02-14-2005	Notice of DO/EO Acceptance Mailed	
12-21-2004	Additional Application Filing Fees	

12-21-2004 A statement by one or more inventors satisfying the
requirement under 35 USC 115, Oath of the Applic

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